



U.S. Department of Justice

Office of the United States Trustee
Central District of California

221 No. Figueroa Street
Suite 800
Los Angeles, CA 90012

Writer's Direct Dial Number (213) 894-4316
Fax (213) 894-6778

TO: All Chapter 7 Trustees
FROM: Maureen A. Tighe, United States Trustee
DATE: March 29, 2001
RE: Handbook Clarification Regarding Asset Insurance

It has come to my attention that questions have been raised regarding the proper steps that should be taken when asset insurance is required, and there are no funds on deposit in the bankruptcy estate to cover the expense of insurance. This is a timely issue as The Executive Office for United States Trustees has updated the *Handbook for Chapter 7 Trustees* and has expanded the discussion on insuring property of the estate. The updated version has just been distributed, and you should expect to receive your copy within a few days. It states with respect to this issue:

2. **ACCOUNTABILITY OF THE TRUSTEE FOR ALL PROPERTY RECEIVED, §704(2)**

Section 704(2) requires the trustee to be accountable for all property received, and FRBP 2015 imposes a duty on a trustee to keep records, make reports, and give notice of a case to persons holding property of the estate.

Control and Preservation of Property

The trustee has the duty and responsibility to insure and safeguard all estate property and property that comes into the trustee's hands by virtue of his appointment.

In those cases where the property appears to have value for the estate, the trustee should obtain control over the property (which may include changing locks at the premises, hiring guards, etc.) and determine the extent and value of the property. The trustee also should immediately obtain insurance in an amount sufficient to protect the estate property (which may include insurance against fire, theft, vandalism, liability and other possible hazards) and take any other steps which may be reasonably necessary to preserve the assets. The trustee should request proof of insurance from the debtor and should ensure that it is continued for the benefit of the estate.

If there is no insurance and there are no estate funds available, the trustee should contact the secured creditor immediately, so that the secured creditor can obtain insurance or otherwise protect its own interest in the property. Where the uninsured property has value, the trustee may consider seeking (a) an agreement with the secured creditor to fund the expense of insurance and provide proper safeguard under §506(c); or (b) a court order allowing the trustee to insure or safeguard the property at the expense of the secured creditor pursuant to §506(c). When the property cannot be insured, the trustee should liquidate the property as quickly as possible in a reasonable manner. Under these circumstances, the trustee is strongly encouraged to file motions to reduce the time within which objections may be filed to the proposed sale.

When the property is fully secured and of nominal value to the estate, the trustee should contact the secured creditor immediately so that the secured creditor can obtain insurance or otherwise protect its own interest in the property. The trustee should immediately abandon fully secured property or uninsured property of no value to the estate. See Chapter 8.D for further information on abandonments. Note that an order granting relief from stay does not automatically constitute abandonment.

If a loss occurs as a result of the trustee's failure to insure or protect estate property, the trustee could be subject to liability including a surcharge.

As indicated by the Handbook guidelines, the insurance issue has become complicated when an estate does not have funds on hand to purchase the appropriate coverage. To assist you in determining what actions to take, I suggest the following measures:

1. Determine if the debtor has maintained insurance coverage which is still in full force and effect, and cause the estate to be the named beneficiary;
2. If the debtor has not maintained current insurance, contact the secured creditor in writing and attempt to establish an agreement to fund the insurance expense; or
3. Obtain a court order allowing you to insure or safeguard the property at the expense of the secured creditor or, in the contrary, seek permission to administer the asset without insurance.

If you have exhausted these steps and still find yourself in a position of administering an uninsured asset, you should advise the UST Trial Attorney assigned to your oversight. By providing us with notification, we will get a better understanding of the circumstances under which insurance coverage will not be purchased by a secured creditor, or when the court fails to compel the secured creditor to fund the insurance expense. It also puts this office on notice that you are experiencing problems. **Do not simply ignore this requirement because there are no funds in the estate!**

Please note that the *Handbook* further states that once all attempts to obtain insurance have failed for a property that has value to the estate, you are directed to liquidated it as quickly as possible in a reasonable manner. However, if the property/asset is fully secured or uninsurable and has no value to the estate, the *Handbook* directs you to formally abandon the asset.

These guidelines have been developed to protect not only the creditors of the estate, but you as the trustee. Please take the time to review your existing caseload with these insurance guidelines in mind and take the necessary measures outlined above. We will expect to hear from you if you have any problems insuring property of the estates that are presently assigned to you. In addition to any correspondence with your UST Trial Attorney, we expect you to update the narrative on Form 1 in your semi-annual report to reflect any issues concerning insurance on estate assets.

If you have any questions, please feel free to contact your UST Trial Attorney.